

SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY
WATER RIGHTS SETTLEMENT ACT OF 1988

AUGUST 25, 1988.—Ordered to be printed

Filed under authority of the order of the Senate of August 11 (legislative day,
August 10), 1988

Mr. INOUE, from the Select Committee on Indian Affairs,
submitted the following

REPORT

[To accompany S. 2153]

The Select Committee on Indian Affairs to which was referred the bill (S. 2153) to provide for the settlement of the water rights claims of the Salt River Pima-Maricopa Indian Community in Maricopa County, Arizona, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is an amendment in the nature of a substitute.

PURPOSE

The purpose of S. 2153, as introduced by Mr. DeConcini (for himself and Mr. McCain) and amended and reported by the Committee, is to provide for the settlement of the water rights claims of the Salt River Pima-Maricopa Indian Community. It would do this by ratifying an agreement, entered into by the Community and its neighboring non-Indian communities after more than two years of intensive negotiations, which provides for the resolution of all water rights claims between and among the signatories. The bill authorizes the appropriations and the actions by the Secretary of the Interior necessary to implement the agreement and to fulfill the United States moral and trust obligations to the Salt River Indian Community.

Together, S. 2153 and the settlement agreement will secure to the Indian Community sufficient water and funds to develop a diverse and stable reservation economy, thereby advancing the Federal Indian policy goals of Indian self-determination and economic

self-sufficiency. By enabling the out-of-court settlement of an array of lawsuits which currently cloud the water rights of more than 1.5 million people living in the Phoenix metropolitan area, the legislation and the settlement agreement are consistent with Congressional and Administration policy of seeking to resolve Indian water rights claims by negotiation rather than litigation wherever possible.

BACKGROUND AND NEED FOR THE LEGISLATION

On November 28, 1878, Captain Adna A. Chaffee of the United States Army reported that white settlers south of the Salt River were attempting to dispossess Pima Indians who lived and farmed by the Salt River. Chaffee characterized the actions by the white settlers as "Nothing more nor less than a legal steal of about a thousand acres of improved lands or rather the improvements put upon the lands by the Indians * * *" Later that year, in a telegram to General Sherman, dated December 23, 1878, General Erwin McDowell reported that,

There is no question in my mind as to the duty of the United States Government toward these Indians, who did more to give peace and security to Arizona than all the white troops combined, and who are not nomads but farmers and intelligent people, fully susceptible of being civilized. The U.S. should at once take measures by injunction or otherwise to restore to these Indians the rights to water to which they are entitled. But as it will take time to do this and as the present exigency [sic] does not admit of delay I ask that an addition [sic] reservation be at once declared for them.

In 1879 President Rutherford B. Hayes established by Executive Order a 51,000-acre reservation for the Salt River Indian Community. The reservation was located at the confluence of the Salt and Verde Rivers in Maricopa County, Arizona, adjacent to what is now the Phoenix metropolitan area. At present the reservation is bordered by the cities of Scottsdale, Mesa, and Tempe, and the Tonto National Forest.

On July 2, 1902, the Secretary of the Interior, pursuant to the Reclamation Act of June 17, 1902, authorized the withdrawal of Salt River valley lands for the construction of works for the Salt River Federal Reclamation Project. In 1903 a Users Association was formed which did not include the reservation in the project area, and in 1904 the Secretary and the Users Association entered into a contract for the repayment of costs associated with the project. That contract provided that only members of the Users Association would receive water from the project.

In 1905, in a suit filed in state court to clarify water rights in the project area, the Federal Government filed claims on behalf of the Salt River and adjacent Ft. McDowell reservations on the basis of the Indians' prior appropriations rights under state law. The Justice Department did not amend these claims following the Supreme Court's 1908 landmark decision in *Winters v. United States*, which established what has come to be termed "Winters right"—a tribe's rights to water sufficient to support a permanent homeland on the

reservation with a priority date of the date of the reservation's establishment—because of the Department view at the time that the *Winters* decision applied only to reservations created pursuant to treaties. Had the Justice Department amended the tribe claims, they could have claimed water rights for the Salt River reservation that would have been senior to most if not all other water users in the project area.

In 1910, the court issued what is known as the Kent Decree, settling the rights in the area, pursuant to which the claims filed on behalf of Indian farmers were limited to natural flows, with no rights to the storage of water. Tribal attempts to have the United States reopen the Kent Decree to secure water rights for the tribes under the *Winters* doctrine met with no success. In 1913 the Secretary requested the Users Association to assist in determining the size of the project, since it was projected that there would not be enough water in the project to serve all members' lands. At that time, the local Bureau of Indian Affairs superintendent signed up some of the Salt River Indian lands for membership in the Users Association, but did not include Indian lands which had not been allocated water rights under the Kent Decree. On November 11, 1913, the Secretary approved a map of the area to be included in the project, but no Indian lands were included on the map.

In 1916, the Congress directed the Secretary to provide water to 6,310 acres of allocated Indian lands from works constructed under reclamation law, but there was no direction as to how much water was to be delivered, nor a direction that the water was to be delivered from Salt River Project supplies. The Bureau of Reclamation and the Salt River Project asserted that there was no more project water available to supply the 6,310 acres.

In 1917, public notice was issued on the official opening of the project, and later, three other public notices announcing the addition of other divisions to project were issued. Despite these additions and the inclusion of other water users in the project no action was taken to assure the inclusion of the Indian tribes as beneficiaries of the reclamation project. On September 6, 1917, the Secretary officially turned over the operation and maintenance of the Salt River Project to the Users Association.

Between 1917 and 1935, the BIA attempted to develop alternative water supplies for the 6,310 acres on Indian allotment, but no permanent solution was found. In the interim, the Users Association built three smaller dams on the Salt River below Roosevelt Dam, further diverting water from the reservation lands. During the same time period, the Secretary signed contracts with the Roosevelt Water Conservation District (RWCD) and Roosevelt Irrigation District (RID), pursuant to which the Secretary approved RID's pumping of water from "waterlogged" project lands, and approved RWCD's lining of canals and the taking of seepage water.

In 1935, the Secretary and the Salt River Project agreed to build Bartlett Dam on the Verde River, which provided some water to the allotted lands of the reservation. In the 1940's the Salt River Project and Phelps Dodge Corporation agreed to build Horseshoe Dam on the Verde River above Bartlett Dam. The Secretary subsequently approved a contract between the Salt River project and the federal government which provided a complex method for storage

rights behind Bartlett Dam once Horseshoe Dam was completed. It was later determined that the accounting system worked to the disadvantage of the tribes, by effectively reducing their water storage credits as the reservoirs behind the dams neared their capacities.

In the 1940's, the Salt River Indian Community filed suit in the Indian Claims Commission against the United States asserting that the Federal government had not properly protected its water rights, for deprivation of water rights, and for the accounting problems that arose as a function of the Bartlett Dam agreement. In 1980 the Community settled its claims against the United States for approximately \$11 million.

In the 1950's, the Salt River Project began to execute agent agreements with valley cities such as Phoenix, Scottsdale, and Tempe, and the project lands began to urbanize. Also in the 1950's Congress passed the McCarran Amendment, authorizing the adjudication of Federal water rights in state court proceedings.

In 1968, the Central Arizona Project (CAP) legislation was passed, and although the Act was intended to benefit Indian tribes as well as other water users, the CAP allocations to tribes were not linked to their *Winters* doctrine rights, but rather based upon a study conducted in the early 1960's by the Bureau of Reclamation that attempted to identify how much tribal land could be irrigated.

Litigation

In recent years, the water rights claims of the Salt River-Pima-Maricopa Indian Community have been the subject of extensive litigation by the Community and its allottees against the Federal government and numerous non-Indian parties in the State of Arizona. The Community and the United States, as its trustee, have filed claims to a total supply of 202,000 acre feet in the general stream adjudication of the Gila River and its tributaries (Salt and Verde Rivers) now pending before the state court in Arizona. The Community is also seeking damages against the United States in Federal Court for failure to protect its groundwater supplies from off-reservation pumping and from thousands of off-reservations pumpers (*Salt River Tribe v. United States, Salt River Project, Roosevelt Water Conservation District, Arizona Public Service and certain municipalities*).

Other suits brought by the Community and its allottees include *Grey et al v. United States*, for failure to deliver water to Community allottees; *United States v. City of Phoenix, et al*, for damages against 250 individuals who pumped groundwater from beneath the reservation; *Salt River Tribe v. Salt River Project*, for damages from breach of contract and racially discriminatory pricing practices with reference to power rates.

Efforts to negotiate a settlement of the tribe's water rights claims over the past two decades failed. However, in 1985 new negotiations began, concurrent with efforts by Arizona water interests to develop a cost-sharing plan to speed completion of the Central Arizona Project, including modifications to dams on the Salt and Verde Rivers. These have produced an agreement that provides for quantification of the Community's entitlement to water settles all claims between the Community and neighboring non-

Indian communities. For this agreement and the settlement it contemplates to effect, legislation is required.

SUMMARY OF PROVISIONS

S. 2153, introduced by Senators DeConcini and McCain, and companion bill H.R. 4102, introduced by Congressman Udall, Kolbe, Rhodes and Kyl, would ratify the settlement agreement and authorize the Federal actions and appropriations necessary for its implementation.

The legislation would quantify the Community's total water rights at 122,400 acre-feet per year (including groundwater pumped on the reservation). The water, which would be used for irrigating up to 27,200 acres of land and for other purposes, would be provided by "firming up" existing rights under an existing court decree and Secretarial agreement, and by a series of exchanges. The Secretary would be directed to rehabilitate the existing irrigation system (built by the United States) and to construct additional on-reservation irrigation facilities. Additionally, a Community trust fund would be established to enable the tribe to further develop and maintain those facilities.

Under the agreement and the legislation, local non-Indian interests will contribute 32,000 acre-feet of water, valued by the Interior Department at \$55,933,000, and bear various costs associated with the water exchanges and transfers, and the State of Arizona would contribute \$3 million to the Community trust fund. The Federal Government will contribute a total of \$47,470,000 to the Community trust fund—to be used for rehabilitation of the existing reservation irrigation system (\$17 million), for design and construction of additional facilities to put the Community's water to beneficial use (\$26 million) and to defray certain CAP operation, maintenance and replacement charges (\$4.47 million). Added to an existing Federal obligation under the CAP authorizing legislation to construct approximately \$10 million in reservation distribution facilities, the total amount of Federal appropriations required to implement the settlement is \$57,470,000.

As reported by the Interior Committee the bill provided for the United States to bear the estimated \$9,500,000 cost of acquiring Colorado River water pursuant to section 7 of the settlement act. However, subsequent to that time and prior to filing of this report, in response to Administration objections to the Federal Government bearing the cost of this water acquisition, the cities and town have agreed instead to contribute \$9 million toward the cost of acquiring this water, thereby increasing the value of the local contribution to \$67.9 million. The ratio of local to Federal costs of the settlement is thus 54 to 46 percent.

LEGISLATIVE HISTORY

Mr. Udall introduced H.R. 4102 on March 8, 1988 with Mr. Kolbe, Mr. Rhodes and Mr. Kyl as cosponsors. Senators DeConcini and McCain introduced a companion bill, S. 2153, on March 4, 1988. The House Committee on Interior and Insular Affairs and the Senate Select Committee on Indian Affairs conducted a joint hearing on both measures on March 24, 1988. By a voice vote at its reg-

ular business meeting on May 11, 1988, the House Committee on Interior and Insular Affairs ordered H.R. 4102 favorably reported with an amendment in the nature of a substitute. By a voice vote at a business meeting on May 26, 1988, the Senate Select Committee on Indian Affairs ordered S. 2153 favorably reported with an amendment in the nature of a substitute identical to that adopted by the House Committee. The Administration opposes enactment of the bills as reported.

S. 2153—SECTION-BY-SECTION ANALYSIS

Section 1 provides that the title may be cited as the "Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988".

Section 2 lists the findings of the Congress with respect to this legislation and states the goals and objectives of the Congress in enacting this legislation.

Section 3 provides definitions of terms used in the Act.

Section 4(a) authorizes and directs the Secretary of the Interior to designate seven thousand acre-feet of the additional active conservation space to be available as a result of modifications to Roosevelt Dam on the Salt River for reregulation of the Community's entitlement to water under the Kent Decree. This designated space will be for seasonal reregulation only, with no annual carryover past October 1 of any calendar year.

Section 4(b) provides that the costs associated with the designated space, estimated by CBO to be \$700,000, shall be nonreimbursable, and that the non-Federal funding obligation for this space under the Plan 6 Cost-Sharing Agreement is forgiven.

Provision of this storage space will enable the Community to exercise fully its rights to the normal flows of the Salt River under the 1910 Kent Decree. Currently, without such storage, a significant portion of the Community's 18,776 acre-foot entitlement goes downriver unsued during periods of low demand, particularly in winter months.

Section 5 directs the Secretary of the Interior to amend the Bartlett Dam Agreement to increase the total Community allotment of developed water to twenty thousand acre-feet on December 31 of any calendar year in which certain conditions occur.

The 1935 Bartlett Dam agreement provided that the United States would pay for twenty percent of the cost of Bartlett Dam on the Verde River. Although the reservoir was built to hold about 200,000 acre-feet of water, the United States did not contract for 40,000 acre-feet a year. Instead, it obtained a storage right in the amount of 60,000 acre-feet, with a maximum yearly entitlement of 20,000 acre-feet. This allowed for carry-over storage in dryer years. For the past 50 years the Community has received approximately 20,000 acre-feet a year from Bartlett Reservoir. However, in recent, above-normal runoff years, the Community's entitlement has gone down because of the accounting method agreed to by the United States in the 1944 contract for construction of Horseshoe Dam upstream. The calculation of Bartlett Dam credits has the unintended effect of penalizing the Community in heavy runoff years. Amend-

ments to the relevant contracts are necessary to secure the twenty thousand acre-feet as part of the Community's water budget.

Section 6(a) confirms a contract between the Carrick and Mangham Agua Fria Lands and Irrigation Company (the predecessor of the Roosevelt Irrigation District), dated August 25, 1921, together with the modifications thereto dated February 3, 1927, and May 31, 1950. The Secretary approved the original contract and the modifications on August 26, 1921, February 12, 1927, and October 9, 1950, respectively. Pursuant to these contracts the District was enabled to pump and use water from certain lands within the Salt River Reservoir District.

Under the Settlement Agreement, through an exchange and water transfer involving RID, Phoenix, SRP and SRPMIC, the Community is to receive up to 10,010 acre-feet of water per year. To design, obtain permits and built improvements required to effectuate the exchange and water transfer, RID, Phoenix and SRP will need to expend considerable time and funds. Consequently, the parties to the Agreement viewed Federal confirmation of the 1921 contract and modifications thereto as necessary to assure the parties that the RID water will be available to effectuate the exchange and to assure the Community that it will receive the water it is to receive under the transfer. Section 6(a) makes clear that the 1921 contract and modifications thereto violate neither the Warren Act of February 21, 1911, (43 U.S.C. 523), nor any other provision of Federal law.

Section 6(b) confirms a contract between the Roosevelt Water Conservation District (RWCD), and the Salt River Valley Water Users' Association dated October 24, 1924, which the Secretary approved on December 2, 1924. Pursuant to this contract, RWCD receives approximately 40,000 acre-feet of water per year from the Salt and Verde Rivers, exclusive of floodwater.

Under the terms of the Settlement Agreement, RWCD must deliver to the Community up to 8,000 acre-feet per year of the water it receives pursuant to the 1924 contract. Consequently, the parties to the Agreement viewed Federal confirmation of the 1924 contract as necessary to assure the Community it will receive the water which it is to receive from RWCD under the Agreement. Section 6(b) makes clear that the 1924 contract as amended and as extended by the Settlement Agreement violates neither the Warren Act of February 21, 1911 (43 U.S.C. 523), nor any other provision of Federal law.

Section 6(c) authorizes and directs the Secretary to revise the RWCD subcontract for CAP agricultural water service to include an addendum substantially in the form of Exhibit "3.1" to the Agreement and to execute the subcontract as revised.

Section 6(d) authorizes the Secretary to execute and perform the agreement attached to the Settlement Agreement as Exhibit 12.3. This agreement will provide for the assignment of up to 5,000 acre-feet of CAP agricultural water from RWCD to the cities and the town which have relinquished water to the Community, after first providing for the delivery of up to 8,000 acre-feet of CAP agricultural water to RWCD. This agreement further provides that, under certain circumstances, the Secretary shall deliver up to 3,000 acre-feet of CAP water that would otherwise have been available to

CAP agricultural users to the cities and the town participating in the Settlement Agreement.

These amounts of water are in addition to the 22,000 acre-feet of Colorado River water to be acquired for the cities and the town pursuant to section 7(a) of this Act. The Settlement Agreement provides that these additional amounts of water will be delivered to the cities and the town pursuant to the contracts authorized by section 7(c). These contracts provide for the recovery of ordinary CAP operation, maintenance, and replacement costs associated with the delivery of these water supplies. The CAP operation, maintenance, and replacement charges associated with the delivery of these additional water supplies will be paid by the cities and the town to the United States or to the CAWCD if CAWCD is the operating agency. However, CAWCD will receive no water service capital charges for the delivery of these additional water supplies; therefore, the Committee intends that the costs otherwise associated with the delivery of these additional amounts of water to the cities and the town shall be nonreimbursable, and that such costs shall be excluded from CAWCD's repayment obligation as provided in section 7(c)(2) of this Act.

Section 7(a) provides that the Secretary shall acquire rights to the annual consumptive use of 22,000 acre-feet of Colorado River water in Arizona having a priority pre-dating that of the Central Arizona Project. The water supply to be acquired cannot be from a source which was included in the water supplies projected to be available to non-Indian users of CAP water. This water supply is to be delivered to the cities and town participating in the settlement in exchange for the relinquishment by them in perpetuity to the Community of 20,000 acre-feet a year of Salt and Verde River water to which such cities and the town would otherwise have been entitled from SRP. The 22,000 acre-feet of water to be acquired is to be delivered, during years of normal and surplus water supply on the Colorado River, exclusively to the cities and the town participating in the settlement. However, during years of water supply shortages on the Colorado River, the 22,000 acre-feet of additional water is to be used to supplement, to a certain extent, the water supplies generally available to all non-Indian municipal and industrial subcontractors of CAP water service. During such shortage conditions, the 22,000 acre-feet of additional water is to be distributed in accordance with a formula set forth in each of the contracts to be entered into with the cities and the town pursuant to section 7(c). This formula has the effect of distributing the additional 22,000 acre-feet of water principally to the cities and the town participating in the settlement, but under most shortage conditions, the formula also has the effect of increasing the water supplies available for delivery to other non-Indian municipal and industrial subcontractors of CAP water service.

Section 7(b) authorizes the Secretary, as part of consideration to willing sellers for the acquisition of water pursuant to subsection (a), to amend existing repayment contracts with the United States to which such sellers are a party to provide for the discharge of any remaining repayment obligation which the sellers owe the United States as of May 30, 1987, and to certify that the sellers'

lands are free from the ownership and full cost pricing limitations of federal reclamation law.

The Committee notes that the Wellton Mohawk Irrigation and Drainage District (WMIDD), located in Yuma County, in southwestern Arizona, and its landowners are the sellers contemplated in this section. WMIDD representatives testified to the committee that the district agreed, in discussions with Interior Department officials in 1986, to provide an allocation of 22,000 acre-feet of Colorado River water in perpetuity for the settlement. This water would be made available through the purchase by the Secretary, from willing district landowners, of approximately 2,000 acres of high water use lands. WMIDD understood that, in return, it would receive relief from ownership and full cost pricing limitations of the Reclamation Reform Act of 1982 and cancellation of the remaining balance of the WMIDD repayment obligation to the United States, effective upon the payment due date of May 30, 1987.

The Committee recognizes that the WMIDD is neither a party to the Settlement Agreement nor to the litigation which would be affected by the settlement and bears no legal or other obligation to contribute to the settlement. Thus, the Committee views as appropriate the consideration authorized by section 7(b). The Committee further views as appropriate that terms and conditions for a transfer of WMIDD water to the Secretary include provisions for WMIDD to receive return flow credits for all drainage waters pumped from areas within the exterior boundary of the District where Colorado River water is applied for irrigation purposes, which are delivered to Station 0+00 of the Main Conveyance Channel, and flows in the Gila River at the Dome Gauging station in excess of flows at the Mohawk gauging station.

The Committee appreciates the concern expressed by WMIDD regarding potential future efforts by municipal or other interests to obtain water from the Colorado River for intrastate transfers for various purposes. The Committee affirms its longstanding policy, evidenced by the provisions of this section, not to authorize any such transfer, from WMIDD or any other such district, without the explicit consent of such district. The Committee further notes that nothing in this legislation affects the title of any WMIDD irrigation works and that any transfer of such title would have to be made pursuant to other authority or Act of Congress.

Section 7(c) provides that the water acquired pursuant to section 7(a) will be delivered to the cities and town pursuant to contracts conforming substantially to the CAP municipal and industrial water service subcontracts for such entities.

Under section 7(c)(1) the cities and the town will be required to pay ordinary CAP operation, maintenance, and replacement charges associated with the delivery of such Colorado River water; however, CAWCD will receive no water service capital charges from the cities and the town for the delivery of the additional Colorado River water supply.

Section 7(c)(2) provides that, for purposes of determining the allocation and repayment of costs of the CAP, as provided in Article 9.3 of CAWCD's current repayment contract with the United States (Contract No. 14-06-W-245), the costs associated with the delivery of water to the cities and the town pursuant to the contracts au-

thorized by section 7 shall be nonreimbursable, and such costs shall be excluded from CAWCD's repayment obligation. The Committee intends that CAWCD shall be relieved of any repayment obligation associated with the delivery of the additional Colorado River water under the contracts authorized by this section to the same extent as provided in Article 9.3 of CAWCD's current repayment contract with respect to project water to be made available to entities other than CAWCD and CAP subcontractors. Thus, under CAWCD's repayment contract, the additional Colorado River water to be delivered to the cities and the town, plus the CAP agricultural water to be delivered to the cities and town pursuant to the agreement authorized by section 6(d), would be treated as CAP project water to be delivered to entities other than CAWCD, CAP subcontractors, and those users in New Mexico to whom water may be made available by the construction of Hooker Dam (or suitable alternative), and CAWCD shall be relieved of any repayment obligation associated with such water to the extent provided in Subarticle 9.3(a)(ii) of CAWCD's current repayment contract.

As described in the preceding paragraph, for purposes of determining CAWCD's repayment obligation, the water to be delivered to the cities and town through CAP facilities pursuant to the Settlement Agreement is in effect treated as if it were CAP project water to be delivered to Indian entities. This is consistent with the intent of the parties and this Committee. The Committee understands that the United States and CAWCD are negotiating certain amendments or revisions to CAWCD's current repayment contract, and intends that CAWCD's repayment obligation shall be adjusted as provided herein under any amended or revised version of the repayment contract as well.

The acquisition of Colorado River water under section 7 does not alter the Secretary's obligation under the Supplemental Plan 6 Agreement relating to the acquisition of water to replace losses incurred by the elimination of Cliff Dam on the Verde River.

Section 7(d) authorizes funds to accomplish the purposes of this section.

Section 7(e) provides that neither the Salt River Valley Water Users' Association nor the Salt River Project Agricultural Improvement and Power District shall become subject to the provisions of the Reclamation Reform Act of 1982 (RRA) by virtue of either its participation in the settlement or its execution and performance of the Agreement, including but not limited to the exchange in this section.

The Committee notes that the Salt River Project is not and has never been subject to the RRA. Section 7(e) reaffirms the inapplicability of the RRA to the Salt River Project.

Section 8 provides authority for a 99-year lease of the Community's CAP allocation of 13,300 acre-feet per year to the City of Phoenix in return for consideration of \$16,000,000. The funds will provide additional capital for the Community's trust fund for investment in water facilities and related economic development.

Section 8(a) authorizes and directs the Secretary to amend the Community CAP Water Delivery Contract to permit the Community to lease CAP water to the City of Phoenix for a term commencing January 1, 2000, and ending December 30, 2098. It further au-

thorizes and directs the Secretary to approve the Community's lease of its CAP water to Phoenix.

Section 8(e) authorizes and directs the Community and the Secretary to lease to the City of Phoenix, for a term commencing January 1, 2000 and ending December 30, 2098, the Community's entitlement to 13,300 acre-feet per year of CAP water under the Community CAP Water Delivery Contract. Section 8(e)(1) requires the City of Phoenix to pay full CAP operation, maintenance, and replacement charges associated with the delivery of such water to the City. These charges are to be paid to the United States, or to CAWCD if CAWCD is the operating agency. Section 8(e)(2) relieves the City of Phoenix of any requirement to pay CAP subcontract charges or CAP water service capital charges with respect to the delivery to the City of such leased water.

Section 8(f) provides that, for purposes of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of CAWCD's current repayment contract, the costs associated with the delivery of the Community's CAP water to the City of Phoenix pursuant to the lease authorized by section 8(e) shall be nonreimbursable, and such costs shall be excluded from CAWCD's repayment obligation. In effect, the Settlement Agreement and the Act provide that such water will continue to be treated as CAP project water to be delivered to Indian entities for purposes of determining CAWCD's repayment obligation, and the amount of costs to be excluded from CAWCD's repayment obligation shall be determined in accordance with Subarticle 9.3(a)(ii) of CAWCD's repayment contract as if such water were CAP project water to be made available to entities other than CAWCD, CAP subcontractors and users in New Mexico to whom water may be made available from Hooker Dam (or suitable alternative).

Section 9 provides for the rehabilitation of existing water delivery facilities on the Salt River reservation and for the establishment of a Community trust fund.

A premise of the Settlement Agreement is that reservation lands which will be irrigated by Settlement water need to be developed and improved to achieve an efficient level of irrigation. Paragraph 4.0 of the Settlement Agreement prescribes an irrigation efficiency level adequate to permit cultivation of crops with water duty of 4.5 acre-feet per acre instead of a water duty of 5.4 acre-feet per acre which is regarded as normal in the Salt River Valley. The Committee acknowledges that Community farmlands, generally maintained by the United States, have fallen into neglect in past decades and the United States should appropriately bear the burden of the costs of land and irrigation improvements required by the settlement.

Section 9(a)(1) directs the Secretary, pursuant to the Colorado River Basin Project Act, (43 U.S.C. 1501 et seq.), to design and construct new facilities for the delivery of water to Community lands from the Community's turnout on the CAP Granite Reef Aqueduct and from the Arizona Canal. It further specifies that the cost for such design and construction shall not exceed the cost which would have been incurred by the Secretary pursuant to the authority of the Colorado River Basin Project Act in the absence of the Settlement Agreement and this Act. The Committee intends that the

total Federal expenditure under the Colorado River Basin Project Act for the purposes of section 9(a)(1) shall not exceed \$10,000,000. The Committee notes that the Secretary may accomplish the directives of section 9(a)(1) through a contract or contracts with the Community pursuant to Public Law 93-638, the Indian Self-Determination and Education Assistance Act.

Section 9(a)(2) provides for the Secretary to deposit into the Community trust fund \$17,000,000 appropriated pursuant to authority of the Snyder Act (25 U.S.C. 13) to rehabilitate and improve existing Community lands and delivery facilities. Consistent with the Committee's policy of promoting efficient water use, the Committee wholeheartedly concurs with the provisions of the Settlement Agreement that these facilities should achieve the 4.5 acre-foot per acre efficiency level.

Section 9(a)(3) provides for the Secretary to deposit in the Community trust fund funds to be appropriated pursuant to section 9(c), for additional land subjugation, assistance for high water cost payments and other economic and Community projects.

Section 9(b) provides for the establishment of a Salt River Community Trust Fund to receive deposits appropriated pursuant to the Settlement Agreement and this Act.

Section 9(c) authorizes appropriations of \$26,000,000 into the Community Trust Fund to carry out the provisions of this section.

Section 9(d) provides that upon completion of the actions described in section 12(a), the Community may use the Trust Fund, principal and income, to fulfill the purposes of this Act, provided that no part of such fund may be used to make per capita payments to members of the Community.

Section 9(e) provides that effective with the payments into the Trust Fund by the Secretary of the amounts required by this section, the Secretary shall have no further duties or responsibilities with respect to the administration of, or expenditures from the Trust Fund, and the United States shall not be liable for any claims or cause of action arising from the Community's use and expenditure of moneys from the Trust Fund.

Section 10 provides for the extinguishment of claims for water by the Community and its allotted land owners; for waivers and releases of claims; and for prosecution of claims in the United States Claims Court.

The settlement will resolve all of the Community's and allotted land owners' claims for water as of the date the authorizations contained in section 10(b)(1) become effective and thereafter, except for any claims for compensation to the Community or to the allottees for damages occurring before the date such authorizations become effective. Under this section, these latter claims may be prosecuted in the United States Claims Court.

Section 10(b)(1) authorizes the Community to execute a waiver and release of all present and future claims of water rights or injuries to water rights against the United States, the State of Arizona or any agency or political subdivision thereof, or any other person, corporation or municipal corporation arising under the laws of the United States or the State of Arizona.

Section 10(b)(2) provides that if the Community brings an action against the United States in the United States Claims Court within

two years of the date of enactment of this Act for money damages ensuing from actions or omissions on the part of the United States resulting in the loss or impairment of the Community's water fights, the United States may assert a timeliness defense against the Community as to damages incurred by the Community more than eight years prior to the commencement of the action, notwithstanding the provisions of 28 U.S.C. 2501 which allow for a six-year timeliness defense. A timeliness defense shall not be available to the United States for damages incurred by the Community within eight years prior to the commencement of the action. This provision mitigates the prejudice incurred by the Community in refraining from litigation during the several years in which it concentrated on settlement negotiations.

Section 11(a) waives the sovereign immunity of the United States and the Community with respect to lawsuits filed in Federal District Court only relating directly to the interpretation or enforcement of the Settlement Agreement.

Section 11(b) provides that, pursuant to the terms of the Settlement Agreement, SRP is authorized to assert the Community's claims to spill water in the General Adjudication of the Gila River System and Source currently pending in the Superior Court of Arizona in and for the County of Maricopa. It further provides that the United States shall not presecute a separate claim or claims for spill water nor challenge any claims to spill water on behalf of the Community in the Gila River Adjudication or in any other administrative or judicial proceeding.

The Committee notes that this provision and the terms of the Settlement Agreement which it affairs apply only to the Salt River Indian Community. The Committee understands and intends that this provision in no way affects the obligations of the United States to assert, prosecute or challenge claims to spill water on behalf of any other tribe or band of Indians in the General Adjudication of the Gila River System and Source or in any other adjudication.

Section 11(c) provides that section 302 of the Colorado River Basin Project Act, which authorizes acquisition by the Secretary of Community lands for purposes related to the construction of Orme Dam (or suitable alternative), shall not apply to the Community as of the effective date of this Act.

Section 11(d) bars the United States from making any claims or assessments against any Indian-owned land within the Community's reservation for reimbursement of costs arising out of the implementation of this Act or the Agreement.

Section 11(e) provides that water received by the Cities and Town pursuant to Paragraphs 10.3, 11.0, 12.2, and 19.0 of the Agreement shall not affect any future allocation or reallocation of the CAP supply.

Section 11(f) approves, ratifies, and confirms the Settlement Agreement, dated February 12, 1988, to the extent that the Settlement Agreement is not in conflict with the provisions of this Act. It authorizes and directs the Secretary to execute and perform the Agreement and to execute and perform any actions required by amendments to the Agreement which may be mutually agreed to by the parties to the Agreement as necessary to bring the Agreement into conformity with the provisions of this Act.

The Committee intends and expects that neither the Secretary nor the other parties shall insist on any amendments to the Agreement which are not necessary to bring the Agreement into conformity with the provisions of this Act.

Section 11(g) provides the consent of the United States, as required by the provisions of section 177 of title 25 United States Code, to the Community to alienate land outside its reservation boundaries to which it holds title in fee, subject to Arizona state law.

Section 11(h) requires the Secretary to request the Arizona Department of Water Resources to recommend a reallocation of any non-Indian CAP agricultural water that has been offered to potential non-Indian CAP agricultural subcontractors but has not been contracted for by such contractors. Within 180 days after receiving these recommendations, the Secretary is required to reallocate such water for non-Indian agricultural use, and the Secretary and CAWCD are thereafter to offer amendatory or new subcontracts for such water to non-Indian agricultural water users. This is consistent with the existing form of subcontract for CAP agricultural water service and existing procedures for entering into such subcontracts.

The Committee intends that all non-Indian CAP agricultural water that is not contracted for by those entities to which such water was originally allocated by the Secretary shall be reallocated and contracted for no later than the date the Secretary issues notice of completion of the CAP water supply system.

The Committee further intends that the Secretary, in reallocating CAP agricultural water pursuant to this section, shall do so consistent with his obligations under Southern Arizona Water Rights Settlement Act of 1982. Section 305 of that Act obligates the Secretary to acquire, by 1992, quantities of reclaimed water for delivery to portions of the Tohono O'odham (Papago) reservations. Section 305(c) permits the Secretary, as an alternative, to acquire and deliver an equivalent quantity of water from several sources, including agricultural water from the CAP which has been contracted for but has been released or will be unused by the contractor during the period in which the Secretary will acquire the water.

Section 12(a) lists actions which must be taken by the parties to the Agreement, by the Secretary and by the Congress before the Community's waiver of claims under section 10 becomes effective. Section 12(b) provides if the actions specified in (a) are not completed by December 31, 1990, the Act shall not become effective.

COST AND BUDGETARY CONSIDERATIONS

The analysis of the Congressional Budget Office on the costs of S. 2153 follows:

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 2153.
2. Bill title: The Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988.

3. Bill status: As ordered reported by the House Committee on Interior and Insular Affairs, May 11, 1988.

4. Bill purpose: S. 2153 would ratify an agreement among the Salt River Pima-Maricopa Indian Community (Community), and a number of state and local interests in Arizona to settle the community's claim to water. The community's claim to water arises from its exclusion from the Salt River Project.

The bill would quantify the amount of water to which the community is entitled and would provide for the delivery of that water to the community through a number of exchanges, transfers, modifications of federal projects, and amendments to federal water contracts. The bill would authorize the appropriation of \$9 million to facilitate the exchange and transfers.

The bill would also require the Secretary of the Interior to rehabilitate existing irrigation systems on the Salt River Pima-Maricopa Reservation, and to assist the community in constructing additional facilities. The community would be authorized to establish a Salt River Community Trust Fund. A total of \$43 million in federal funds would be authorized to be appropriated and deposited into the Fund for these purposes. The bill also contains terms and conditions for the use of the trust fund.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1989	1990	1991	1992	1993
Authorization level (sections 7 and 10)	52				
Estimated outlays	50	2			

In addition to the funds authorized in sections 7 and 10, we expect enactment of S. 2153 to result in forgone repayments to the federal government totaling approximately \$11 million over the next 50 years. These costs would be offset by savings of approximately \$11 million over the same period due to lower operation and maintenance requirements at federal water facilities resulting from the agreement.

The costs of this bill fall within budget function 300.

Basis of estimate: This estimate assumes that S. 2153 would be enacted early in fiscal year 1989 and the full amounts authorized would be appropriated in that year. Estimates of the additional costs and savings resulting from ratification of the water rights agreement are based on information from the Bureau of Reclamation.

6. Estimated cost to State and local governments: As part of the agreement set forth in this bill, the local non-Indian interests have agreed to contribute specific amounts of water to the community and to bear certain costs associated with the water transfers and exchanges authorized in the bill. We estimate that these commitments would total approximately \$75 million for water and associated additional operation and maintenance costs. The State of Arizona would also be required to contribute \$3 million to the Community trust Fund established by this bill.

7. Estimate comparison: None.

8. Previous CBO estimate: None.
9. Estimate prepared by: Theresa Gullo.
10. Estimate approved by: C.G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 2153 will have no regulatory or paperwork impact.

EXECUTIVE COMMUNICATIONS

The Committee received the following communications on S. 2153 from the U.S. Department of the Interior and the U.S. Department of Justice.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, May 10, 1988.

Hon. DANIEL K. INOUE,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: At the March 24, 1988, joint hearing on S. 2153 and H.R. 4102, bills to provide for the settlement of the water rights claims of the Salt River Pima-Maricopa Indian Community in Maricopa County, Arizona, I agreed to provide your Committee with the Department of the Interior's detailed written comments on the proposed bills. Contained herein are the Department's comments on the proposed legislation and our response to a question posed by Senator DeConcini.

The Department strongly opposes enactment of the proposed legislation as written. However, we would not object to enactment if the amendments proposed herein are adopted. As I stated in my testimony, the Administration believes that the proposed cost of this settlement to the Federal government is too high. If the legislation is enacted in its current form, the Department will recommend that it be vetoed by the President.

In our view, the provision of \$78 million provided in H.R. 4102 and S. 2153 far exceeds the Federal Government's likely legal exposure for monetary damages under existing and potential litigation. Moreover, there are contingent liabilities in the proposed settlement, which are only partially offset by savings at the Yuma desalting plant, that will add to the Federal cost. Finally, the Federal commitment is significantly in excess of what is currently authorized or which reasonably could be expected under the Central Arizona Project's authorizing legislation and programmatic authorities and appropriations available to the Bureau of Indian Affairs (e.g., the Snyder Act).

We also would like to respond to Senator DeConcini's question concerning the Department of the Interior's views on potential legislation requiring the express approval of the Wellton-Mohawk Irrigation and Drainage District (WMIDD) before any arrangements are consummated for additional export of water from the district's

Colorado River allocation. We would prefer not to comment on legislative proposals in advance of their formulation and formal presentation for review. The Congress must realize, moreover, that constraining the movement of such water may impede future Indian water rights settlements in Arizona.

We have referred to the printed version of H.R. 4102 to offer the following comments and proposed amendments:

Section 2(a)(2).—We understand that the SRPMIC does not have any Court of Claims litigation currently filed. As this section presently states that the SRPMIC has filed such claims, we suggest the bill be amended for clarity.

Section 2(a)(8).—Under the proposed legislation, the non-Federal defendants would not transfer new water rights to the SRPMIC in every instance. The provisions regarding the Kent Decree and Bartlett Dam merely firm up existing water supplies for the SRPMIC. Therefore, we suggest the following language be added: “* * * surface water to the community, to provide for the means of firming existing water rights of the community, and to * * *”.

Section 2(a)(10).—We believe once the bills are amended to reflect our concerns and the concerns of the Department of Justice and various non-Federal organizations, the February 1988 settlement agreement will have to be amended or reformed. We suggest the section be amended to read, “(10) it is the purpose of this Act (a) to authorize the Secretary of the Interior to enter into an agreement with the Community and the non-Federal parties for settlement of the Community’s claims and for other purposes, and, * * *”.

Section 3(a).—Similar to our concern expressed above, this section should be modified to state, “(a) ‘Agreement’ means that agreement dated February 12, 1988, as it is amended or reformed to comply with this Act, among the * * *”.

Section 5.—This section adopts the current language in the February 1988 agreement. We do not believe these proposed changes to the Bartlett Dam Agreement are beneficial to the Community, and therefore, recommend the section be amended to read, “The Secretary is authorized to negotiate an amendment to the Bartlett Dam Agreement to conform to the provisions of this Act, and for other purposes agreed upon by the Community and the non-Federal parties to the agreement.”

Sections 6(a) and (b).—As a general principle, we question whether the Congress should “ratify, confirm and validate” contracts to which the United States is not a party. The Congress’ affirmation of these contracts, which essentially are private agreements on water rights within the State of Arizona, would raise questions as to whether the Congress would reverse 85 years of Reclamation law with regard to non-interference with State control over its water (e.g., see Section 8 of the Reclamation Act of 1902, 43 U.S.C. 372).

Of more serious concern is the precedent that would be set with Congressional approval and confirmation of the Roosevelt Water Conservation District’s (RWCD) entitlement to Salt River water. We recognize this settlement provides a vehicle whereby RWCD can remove any potential challenges by the other parties to its water right claims. However, for the following reasons, we object to this proposed “approval and confirmation”:

The United States is not a party to the October 24, 1924, contract. It is a private water rights agreement for which the legislation would purport to grant some sort of Federal sanction. We note also that in 1917, the Federal Government assigned to the non-Federal project beneficiaries any Salt River Project water rights it held. Therefore, no basis exists for congressional confirmation of these private water rights as protection of Federal water rights.

This is a private water right matter over which Arizona law and courts have jurisdiction. This proposed confirmation goes even further than the other approvals and confirmations delineated in this section since it attempts to confirm directly an entitlement to water, a role properly belonging to State administrative authorities and courts.

Even though any challenge to RWCD's rights by the SRPMIC, or the United States on behalf of the SRPMIC, would be removed, there are other Indian tribes in Arizona that may wish to challenge RWCD's rights. Such a challenge may or may not prevail in a court of law. However, if the Congress should choose to approve and confirm these rights, that action could operate to prejudice the claims of other tribes in actions they may bring or which the United States may bring on their behalf. In short, this proposed confirmation may act as an unintentional constraint on the Secretary of the Interior in fulfilling his trust responsibilities to other Arizona tribes.

Section 7(a).—The literal reading of this section would imply that the Secretary is to acquire only 22,000 acre-feet instead of an annual supply of 22,000 acre-feet. We suggest that after the word "sellers", the section should be reworded to state "rights to twenty-two thousand acre-feet of water annually from the main stem.
* * *

The Federal Government is willing to cooperate with Indians and non-Indians pursuing rights settlements, but it is not responsible for mitigation impacts associated with successful assertion of Indian water rights claims. To reduce the cost of this proposed settlement to the Federal Government, we suggest that one approach would be to have the acquisition of the Colorado River water financed by the non-Federal parties. Therefore, we suggest that the following sentence be added to this section, "The Secretary may acquire such water supplies with non-Federal contributions."

Section 7(b).—For clarity, we suggest that "CAP" be added to the second sentence of this section before the words "non-Indian."

Section 7(c).—Delete this section if, under our recommendations, all acquisition costs would be financed by non-Federal entities.

Section 8(a)(1).—Although the language with respect to a 1-year lead time for renewal of the contract is found in many Reclamation contracts, a question recently has arisen as to the effect of not meeting the 1-year-in-advance requirement. Therefore, in order to remove any ambiguity, we suggest the section end with the word "parties."

Section 8(a)(3).—It is unclear why this section is necessary. If the Secretary is authorized and directed to amend the SRPMIC's CAP water service contract, and to execute the lease with the city of Phoenix, why is further "authorization, approval and confirmation" of the contract and lease necessary? In the interests of fore-

stalling future debates about the meaning of ambiguous legislative language, we recommend that this section be deleted.

Section 8(b).—The references to “paragraph 6(B)” should be changed to “paragraph 7(b)”.

Section 8(c).—This section authorizes a further Federal subsidy to the settlement. Central Arizona Project operation, maintenance and replacement (OM&R) costs are approximately \$60 per acre-foot. Salt River Project water delivery costs are approximately \$9 per acre-foot. The difference between the two rates, for 13,300 acre-feet of water, would result in a potential annual cost of \$678,000 for a maximum of 10 years. This is a substantial additional Federal cost that we believe should be absorbed by the non-Federal participants to the settlement. The present value of this additional cost is approximately \$4.4 million.

Please note that the correct citation of the Leavitt Act is July 1, 1932.

Section 8(e).—We believe that this restriction unduly limits the SRPMIC's options to manage its water supplies in the future. While it may be the mutual intent of the SRPMIC and the non-Federal parties to restrict off-reservation marketing, they can agree to that within the modified settlement agreement without a legislative sanction against such marketing. In keeping with our testimony at the March 24 hearing regarding the further potential for SRPMIC marketing of its water, we recommend this section be deleted.

Section 9(c).—To clarify that the works to be constructed or rehabilitated will deliver 4.5 acre-feet per acre from a combination of both surface and ground water sources, we recommend that the phrase “from the water sources available to the Community” be inserted after “acre.” It is our interpretation of the proposed legislation that the Secretary has the discretion to adopt an economical system design so long as it will deliver reliably 4.5 acre-feet per acre.

Section 10(a).—We believe congressional extinguishment of Allottee claims is unwarranted. This may impose a consequent potential cost to the Federal government where there is no legal liability at present. We recommend this section be deleted, and any Allottee claims be permitted to be litigated in the Court of Claims or independently settled through the Department of Justice.

Section 10(b).—We recommend that subsection (2) of this section be deleted, as appropriations will be covered by Section 13 (see below). Also, the provisions of subsection (a) could be consolidated with the revised language of Section 10(c)(3) (see next comment).

Section 10(c)(3).—We recommend that this section be reformed to lower the total Federal contribution to the Trust Fund, fully taking into account the costs to be incurred under Section 9 rehabilitation and construction work and the present value of costs incurred under section 8(c), if paid by the Federal Government. Then, we recommend that subsections (A) and (B) be consolidated to indicate this contribution is full compensation for all claims listed therein.

Section 10(c)(5).—The amount to be appropriated should be a separate section, which we have designated as Section 13 (see below).

Section 11(e).—We assume the intent of the section is to ensure that a reallocation of CAP water would not affect adversely the

water exchanges authorized by the Act. We suggest the section be revised to state that the water under the cited sections of the Agreement not be "affected" by a future reallocation of CAP supplies. We anticipate some of this water must be "counted" when calculating how much water will be available to all CAP entities under a reallocation or during years when less than a full supply of Colorado River water is available.

Section 11(f).—This section should be deleted. This presents an unquantifiable future cost to the Federal Government over which it would not have any control. We believe that the Salt River Project should be willing to provide service to the SRPMIC at fair rates as a portion of its contribution to this settlement. Therefore, we recommend that the Agreement be modified to lock in a rate structure for service to the SRPMIC from the Salt River Project with no contingent payments required of the United States.

Section 11(g).—We recommend this section be revised to state, "The Secretary is authorized to negotiate an amendment or a reformation of the Agreement to conform it to the provisions of this Act and for other purposes mutually agreed to by the Community and the non-Federal parties to the Agreement."

Section 12(a).—Add the following as required actions for implementation of the Act, and renumber accordingly;

"(1) the Secretary has executed an amendment or a reformed Agreement with the Community and the non-Federal parties in accordance with Section 11(g) of this Act;

"(7) the funds to be contributed by the State of Arizona pursuant to Section 10(c)(2) (as it may be revised) have been deposited to the Community's Trust Fund."

Finally, we recommend that a Section 13 be added to the legislation as follows:

"SEC. 13. AUTHORIZATION OF APPROPRIATIONS.—There is hereby authorized to be appropriated ————— to carry out the provisions of this Act."

If we can be of any further assistance regarding this legislation, please let us know.

Sincerely,

JAMES W. ZIGLAR,
Assistant Secretary.

Identical letters sent to Honorable Morris K. Udall, Chairman, Committee on Interior and Insular Affairs.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, May 10, 1988.

Hon. MORRIS K. UDALL,
Chairman, Committee on Interior and Insular Affairs,
House of Representatives, Washington, DC.

DEAR CHAIRMAN UDALL: We have completed our review of H.R. 4102, the "Salt River Pima-Maricopa Indian Community Water Rights Settlement Act," the proposed "Salt River Pima-Maricopa Indian Community Water Rights Settlement Agreement" which is incorporated by reference in H.R. 4102 and the appendices to the

package. Absent significant revisions, this Department opposes enactment of the H.R. 4102 package.

We have a number of concerns, some more general and some specific. At the outset, H.R. 4102 and the proposal purport by their terms to settle litigation. Indeed, several pending cases would be resolved by the package. However, the level of contemplated federal funding—even that amount allocated solely to litigation settlement—far exceeds the exposure of the United States in the pending litigation. Measured in this manner, it becomes apparent that the thrust of the package is something other than the settlement of litigation. This distinction must be clear. Only in this way can this effort to resolve complex and challenging water-related issues of great significance for the future be fairly evaluated.

Second, we find equally troubling the fact that the package establishes the precedent that the United States will (at its own cost) secure substitute water supplies for existing water users who may be adversely impacted by the successful assertion—as is probable here—of Tribal water claims under *United States v. Winters*, 207 U.S. 564 (1908).

Third, Sections 2(a)(10)(a) and 11(g) of the bill approve, ratify, and confirm the product of negotiations among the Community and the non-federal Arizona water interests. Then H.R. 4102 obligates the Secretary of the Interior to execute that product, thus establishing an undesirable precedent for the conduct of any future negotiations affecting federal interests and Indian (or other federal) water rights.

Fourth, in at least two respects, the estimated \$88,000,000 contribution of the United States—substantial in and of itself—may overlook significantly higher potential costs. Section 7(a), for instance, obligates the United States to purchase 22,000 acre-feet of water from the main stem of the Colorado River in Arizona. The package assumes that these water supplies could be purchased for \$14,000,000. If the non-federal interests are correct in valuing their own proposed water contribution at \$3,000 per acre-foot, however, the total obligation assumed by the United States for this purchase could well be as high as \$66,000,000. We also note that virtually the entire contribution to the trust fund established under Section 10(c)(3) is a federal responsibility. More significantly, Section 10(b)(2) views \$10,000,000 of that trust fund contribution as a payment to settle what are unfiled and unspecified water claims allegedly held by the Community against the United States. This amount would, in any event, be in addition to the \$13,000,000 that the community was paid pursuant to a 1982 settlement agreement for these same claims in *Salt River Pima-Maricopa Indian Community, et al. v. United States*, Docket No. 291 (Ct.Cl.).

Fifth, in a significant way, the package totally fails to resolve existing litigation, in essence substituting new claims and potentially increasing federal exposure over that existing in the face of pending claims. Specifically, Section 10(a)(1) provides that any present and future claims of Indian allottees are “extinguished.” “Claims” are defined to include virtually any water claim (groundwater, surface water or effluent). The package then authorizes the allottees to initiate litigation in the Claims Court for a “taking” of their “claims.” Not only does this section not settle *Herman Grey, et al.*

v. *United States*, No. 588-84L (Claims Court), but it also sets the stage for future litigation which could include additional interest exposure. Furthermore, in any future litigation, the United States would be precluded from asserting "a timeliness defense as to damages incurred within six years before the commencement of the action."

Sixth, we understand from testimony at the March 24, 1988 hearing on H.R. 4102 that the Wellton-Mohawk Irrigation Drainage District expects to be exempted from all provisions of acreage limitation law, including those of the Reclamation Reform Act, if the Secretary acquires 3,000 acres of land within the district. We question the wisdom of this exemption.

Seventh, normally the United States or a tribal entity itself will represent tribal interests in general stream adjudications. The United States is a trustee, and as such makes claims on behalf of the beneficiaries of the trust (here, the Community) in litigation. We are concerned that Section 11(b) of the bill would set a precedent for the erosion of this trust relationship by delegating to a non-federal entity, the Salt River Project, the duty to represent the Indian Community on the Community's claim to spill water.

Eighth, we are concerned that the Arizona Superior Court may not be able to enter a judgment confirming the settlement of the Community's claims to water in that case unless all parties assent to the agreement. At least one irrigation district testified at the March 24, 1988, hearing on this bill that it objects to the settlement. Hence, there is no certainty that the settlement can receive the judicial recognition that is necessary.

Finally, we recognize that the package includes numerous and lengthy appendices which would ratify and confirm certain agreements and contract amendments. In view of our fundamental objections and the comments of the Department of the Interior, it is apparent that the package would require substantial reconfiguration to meet the concerns of these two agencies. Thus, it would appear unnecessary to address the current versions of the appendices at length.

Overall, then, the current H.R. 4102 package is not warranted by the litigation now pending against the United States. Essentially, the package presents a project initiative and must rise or fall on that basis. In that regard, the package actually increases litigation exposure as to allottee claims and presents a number of extremely complicated water transactions. Although we defer to the Department of the Interior as to those transactions, it is apparent that the package, at bottom, arranges for the United States to provide additional water supplies, at its expense, for primary local interests.

We appreciate having had the opportunity to review the H.R. 4102 package. However, for the reasons indicated we cannot support the initiative as now framed.

The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the Administration's program and that en-

actment of this legislation would not be in accord with the program of the President.

Sincerely,

THOMAS M. BOYD,
Acting Assistant Attorney General.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that enactment of S. 2153 will not result in any changes in existing law.

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